

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

TOM F. FIELDS, III,)	
)	
Plaintiff,)	
)	
v.)	CV 123-136
)	
LIEUTENANT ASHLEY,)	
)	
Defendant.)	

ORDER

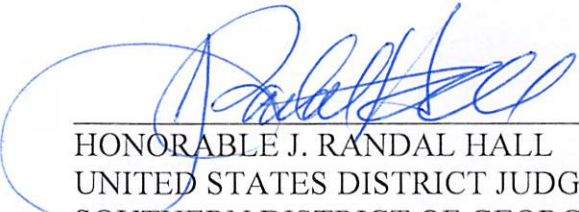
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Although Plaintiff did not file objections to the Report and Recommendation, he filed a series of documents when faced with the prospect of dismissal indicating he has been experiencing homelessness, only recently picked up his mail related to this case, and requires additional time to comply with the Court's prior Orders. (Doc. nos. 51-53.) Nothing in Plaintiff's filings changes the analysis that this case is due to be dismissed as a discovery sanction and for Plaintiff's failure to prosecute this case. Plaintiff provides insufficient explanation for several months of his failures to respond to defense counsel and the Court and, indeed, suggests he is unable to meaningfully pursue this case. (See doc. no. 51 ("This case is too complex for Plaintiff to carry on.").)

However, in light of Plaintiff's filings, it is unclear whether Plaintiff's recalcitrance was due to willfulness or bad faith, and the Court is not persuaded that it would be appropriate

to dismiss the instant action with prejudice. Moreover, the Court recognizes Plaintiff is proceeding *pro se* and acknowledges that courts have voiced a dislike for the harshness of dismissing a *pro se* case with prejudice prior to an adjudication on the merits.¹ See, e.g., Cordes v. Chipi, 773 F. App'x 551, 552-53 (11th Cir. 2019) (*per curiam*); Dickson v. Ga. State Bd. of Pardons & Paroles, No. 1:06-CV-1310, 2007 WL 2904168, at *6 (N.D. Ga. Oct. 3, 2007). Thus, the Court declines to recommend the harshest penalty of dismissal with prejudice under Fed. R. Civ. P. 37 and instead finds dismissal without prejudice is appropriate.

Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge, as modified herein, as its opinion, **GRANTS** Defendant's motion to dismiss, (doc. no. 47), **DISMISSES** this case without prejudice, **DENIES AS MOOT** Plaintiff's motions, (doc. nos. 51, 52), and **CLOSES** this civil action.

SO ORDERED this 23rd day of May, 2025, at Augusta, Georgia.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹ Unless the Court specifies otherwise, a dismissal for failure to prosecute operates as an adjudication on the merits. See Fed. R. Civ. P. 41(b).